United Nations A/67/498

General Assembly

Distr.: General
8 October 2012
English
Original: Spanish

Sixty-seventh session
Agenda item 168
Observer status for the Andean Development Corporation in the General Assembly

Note verbale dated 5 October 2012 from the Permanent Mission of Colombia to the United Nations addressed to the Secretariat

The Permanent Mission of Colombia to the United Nations presents its compliments to the Secretariat of the United Nations and has the honour to refer to the letter dated 6 July 2012 from the Permanent Representative of Colombia addressed to the Secretary-General (A/67/142), concerning the provisional agenda of the sixty-seventh session of the General Assembly.

In this regard, the Permanent Mission has the honour to submit herewith a copy of the text of the Agreement establishing the Andean Development Corporation (see annex), and to request that it be circulated as a document of the General Assembly under agenda item 168.

12-53852 (E) 231012 121112

Please recycle

Annex to the note verbale dated 5 October 2012 from the Permanent Mission of Colombia to the United Nations addressed to the Secretariat

Agreement[1] establishing the Andean Development Corporation

The Governments of the Republics of Ecuador, Bolivia, Chile, Colombia, Peru and Venezuela, motivated by their mutual desire to achieve the economic integration of their countries as soon as possible in order to expedite the economic and social development of their peoples, in accordance with the principles set forth in the Treaty of Montevideo, in the Charter of Punta del Este, in the Declaration signed at Bogota by the Presidents of Chile, Colombia and Venezuela and by the personal representatives of the Presidents of Bolivia, Ecuador and Peru, and in the Declaration of the Presidents of America at Punta del Este;

Expressing the need for each of the countries parties to the Declaration of Bogota to aim at creating more favourable economic conditions for participation in the Latin American Common Market;

Declaring that, in order to achieve the aforesaid purposes, it is necessary to overcome the obstacles deriving from the different levels of development, the different economic conditions in general and in particular those related to markets, in order to promote the coordinated and balanced growth of the subregion;

Bearing in mind that the Declaration of Bogota established the Joint Commission and other entities as organs for promoting, consulting on and coordinating the policies to be adopted by the various countries of the subregion, and advocated the establishment of an agency to undertake by specific measures the action agreed upon, particularly with regard to the study and implementation of multinational projects which would serve as a dynamic element in the operation and improvement of a subregional agreement on integration;

Believing that each country should enact relevant laws, regulations and administrative provisions with a view to achieving more effective implementation of the various activities to be carried out by the aforesaid agency within the subregion pursuant to its purpose;

Considering that the participation of the public and private sectors of the countries within and outside the subregion, as also the participation of international financial organizations, is of crucial importance because of the contributions they can make in the form of technical, scientific, financial and technological assistance;

Declaring that joint action by the countries of the subregion is important for the achievement of balanced and coordinated economic development in conjunction with the other Latin American States which, together, will make up the Common Market;

Have resolved to found a development corporation and, to this end, to conclude the Agreement establishing it, designating for this purpose their Plenipotentiaries, who, having presented their full powers, which have been found in good and due form, have agreed to establish the Andean Development Corporation, which shall be governed by the following provisions:

[1] This Agreement has, as the annex indicates, been amended on a number of occasions. For purposes of this edition, the footnotes refer only to the most recent amendment incorporated.

Contents

Chapter I
Name, legal status, headquarters, purpose and functions

Article 1. Name and legal status

Article 2. Headquarters

Article 3. Purpose

Article 4. Functions

Chapter II
Capital shares and shareholders

Article 5. Capital

Article 6. Issuance of shares against non-subscribed authorized capital

Article 7. Special subscription right

Article 8. Exposure limits

Article 9. Increase or reduction of capital

Article 10. Transferability of stock

Chapter III
Shareholde[illegible]' meetings

Article 11. Shareholders' meetings

Article 12. Regular and special meetings

Article 13. Terms of reference of regular meetings

Article 14. Terms of reference of special meetings

Article 15. Amendment of the agreement

Article 16. Quorum

Article 17. Decisions

Article 18. Right to vote

Article 19. Distribution of reports and balance sheets

Article 20. Minutes

Article 21. Votes of the members of the Board of Directors

Article 22. Force of the decisions

Chapter IV
The Board of Directors

Article 23. Membership

Article 24. Appointment and election

Article 25. Quorum

Article 26. Resolutions

Article 27. Terms of reference of the Board of Directors

Article 28. Replacement

Article 29. Meetings

Article 30. Minutes

Chapter V
The Executive President and other officers

Article 31. Duties of the Executive President

Article 32. Term of office

Article 33. Temporary absences

Article 34. Vacancy

Article 35. Powers

Article 36. Vice-Presidents

Article 37. Staff appointments

Article 38. Selection of staff

Article 39. International character of the staff

Chapter VI
Accounting period, balance sheet and profits

Article 40. Accounting period

Article 41. Balance sheet and statement of profits and loss

Article 42. Reserve and special funds

Article 43. Auditors

Chapter VII
Dissolution and arbitration

Article 44. Dissolution

Article 45. Arbitration

Chapter VIII
Immunities, exemptions and privileges

Article 46. Scope of this chapter

Article 47. Immunity of assets

Article 48. Transferability and convertibility

Article 49. Inviolability of archives

Article 50. Freedom of assets from restrictions

Article 51. Privilege for communications and correspondence

Article 52. Tax exemption

Article 53. Personal immunities and privileges

Article 54. Judicial proceedings

Chapter IX
Withdrawal and suspension of "A" series shareholders

Article 55. The right of withdrawal

Article 56. Suspension

Chapter X
Final provisions

Article 57. Entry into force

Article 58. Reservations to the Agreement

Article 59. Accession

Article 60. Reinstatement

Interim provisions

Annex

Chapter I
Name, legal status, headquarters, purpose and functions

Article 1. Name and legal status

By this Agreement the High Contracting Parties establish the Andean Development Corporation.

The Corporation is a body corporate in international public law and shall be governed by the provisions hereof.

Article 2. Headquarters

The Corporation shall have its headquarters in the city of Caracas, Republic of Venezuela.

The Corporation may establish such agencies, offices or units as may be necessary for the performance of its functions, in each of the participating countries or outside of them.

Article 3. Purpose[2]

The purpose of the Corporation shall be to promote sustainable development and regional integration by providing multiple financial services to clients in the public and private sectors of its shareholder countries.

Article 4. Functions[3]

In order to attain the purpose indicated in the preceding article, the Corporation shall have the following functions:

(a) To carry out studies aimed at identifying investment opportunities and to direct and prepare the corresponding projects;

(b) To disseminate among the countries in the area the results of its research and studies, in order to channel efficiently the investment of available resources;

(c) To provide, directly or indirectly, the technical and financial assistance necessary for preparing and implementing multinational or complementary projects;

(d) To obtain domestic or foreign credit;

(e) To issue bonds, debentures and the like for allocation within or outside the shareholder countries;

(f) To promote the acquisition and mobilization of resources;

In performing the functions referred to in this and the preceding subparagraph, the Corporation shall be subject to the legal requirements of the countries in which the said functions are performed or in whose national currency the said bonds and debentures are issued;

(g) To encourage capital and technological contributions on the most favourable terms;

[2] Amended by Decision No. 164/2005 and the 2005 Protocol of Amendment.
[3] Amended by Decision No. 187/2009.

(h) To grant loans and provide guaranties, suretyship and other forms of guarantee;

(i) To encourage underwriting of the subscription of shares and to underwrite them whenever the relevant requirements are met;

(j) To promote the organization of enterprises, their expansion, modernization or conversion, for which purpose the Corporation may subscribe to stocks or shares;

The Corporation may transfer the stocks, shares, rights and bonds and debentures it acquires by offering them, in the first instance, to public or private entities of its shareholder countries and, if they are not interested, to third parties interested in the economic and social development of the said countries;

(k) To carry out, in whatever manner it may determine, any specific tasks or negotiations related with its purpose which it may be asked to undertake by its shareholders or by third parties;

(l) To coordinate its action in developing its shareholder countries with that of other national and international bodies;

(m) To recommend the necessary coordination machinery for the entities or organizations in the area that provide investment resources;

(n) To acquire and dispose of personal and real property, to institute or contest judicial and administrative actions and, generally, to carry out whatever kinds of operations, acts, contracts and agreements may be necessary to fulfil its objectives.

Chapter II
Capital shares and shareholders

Article 5. Capital[4]

The authorized capital of the Corporation shall be ten billion United States dollars (US$ 10,000,000,000), divided as follows into Ordinary Capital shares and Callable Capital shares:

1. Ordinary capital shares to a total of six billion five hundred million United States dollars (US$ 6,500,000,000) allotted in three Series, "A", "B", "C", in the following manner:

A. The "A" Series, comprising fifteen (15) registered shares in the amount of one million two hundred thousand United States dollars (US$ 1,200,000) each, for a total amount of eighteen million United States dollars (US$ 18,000,000), which shall be subscribed by the Government of each of the Member Countries or by public or semi-public institutions or institutions under private law pursuing a social or public purpose designated by the Government;

B. The "B" Series, comprising one million (1,000,000) registered shares in the amount of five thousand United States dollars (US$ 5,000) each, for a total amount of five billion United States dollars (US$ 5,000,000,000) to be

[4] Amended by Decision No. 187/2009.

special procedures for the settlement of disputes between themselves and the Corporation as may be prescribed in this Agreement, in the by-laws of the institution or in contracts entered into with it.

Chapter IX
Withdrawal and suspension of "A" series shareholders

Article 55. The right of withdrawal[20]

Any "A" series shareholder may withdraw from the Corporation, in which case the Corporation shall acquire the share. Notice of such a decision shall be transmitted to the Board of Directors in writing.

"A" series shares shall be paid according to their book value and the Board of Directors shall determine the payment period, which shall not exceed five (5) years, in the light of the financial situation of the Corporation. "B" series shares belonging to natural or juridical persons of the country of the "A" series shareholder who has decided to withdraw from the Corporation may be freely transferred within the Member Countries provided that the proportion assigned to natural or juridical persons in private law, as specified in article 5 (3), is maintained. In the event of withdrawal of an "A" series shareholder, the next Regular Shareholders' Meeting shall adjust the relevant provisions of this Agreement to the new situation in accordance with the general tenor of the Agreement.

Article 56. Suspension

If an "A" series shareholder is seriously negligent, in the opinion of the Board of Directors, in fulfilling any of his obligations to the Corporation, he may be suspended by decision of the Shareholders' Meeting.

A shareholder so suspended shall automatically cease to be a member of the Corporation fifteen (15) months from the date of suspension unless the Shareholders' Meeting decides otherwise.

While under suspension, a shareholder shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal.

Chapter X
Final provisions

Article 57. Entry into force

This Agreement shall enter into force when the instruments of ratification have been deposited with the Ministry of Foreign Affairs of Venezuela by representatives of three (3) signatory countries, including the host country. If, within one year from the date of deposit of the instruments of ratification by the last of the three countries, the remaining countries have not deposited their instruments of ratification, the Board of Directors shall convene a Special Shareholders' Meeting for the purpose of adjusting the relevant provisions of this Agreement to the number of countries that have ratified it.

[20] Amended by Decision No. 187/2009.

A country whose instrument of ratification is deposited before the date on which this Agreement enters into force shall become a member on that date. Any other country shall become a member on the date on which its instrument of ratification is deposited.

Article 58. Reservations to the Agreement

No reservations may be made with respect to the signature or ratification of or accession to this Agreement.

Article 59. Accession[21]

The present Agreement shall be open for accession by all Latin American and Caribbean countries that meet the conditions for their accession determined by the Shareholders' Meeting. The instruments of accession shall be deposited with the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela.

The Agreement shall enter into force for acceding States thirty (30) days after the date the Shareholders' Meeting has determined that the conditions for accession, including the deposit of the corresponding instrument of accession, have been met. The Shareholders' Meeting shall consider and approve the adjustment of the relevant provisions of this Agreement necessitated by the accession of a new State.

Article 60. Reinstatement

The Shareholders' Meeting shall determine the procedure for the reinstatement of an "A" series shareholder who has withdrawn.

Interim provisions

First: The host country shall convene the first Shareholders' Meeting within sixty (60) calendar days from the entry into force of this Agreement.

Second: During the interval between the date of entry into force of the Agreement and the holding of the Special Shareholders' Meeting referred to in article 57, the Andean Development Corporation shall be provisionally administered in the manner established by its Shareholders' Meeting in accordance with the general criteria set forth in this Agreement.

Third: If three (3) countries have ratified this Agreement and the host country has not done so three months from the date of deposit of the last instrument of ratification, the ratifying countries may decide on a different site for its headquarters.

[21] Amended by Decision No. 164/2005 and the 2005 Protocol of Amendment.

subscribed by the Governments or public, semi-public or private entities of the Member Countries;

C. The "C" Series, comprising two hundred and ninety-six thousand four hundred (296,400) registered shares to a total amount of five thousand United States dollars (US$ 5,000) each, for a total amount of one billion four hundred and eighty-two million United States dollars (US$ 1,482,000,000) to be subscribed by juridical or natural persons from outside the Member Countries;

2. Callable Capital shares in a total amount of three billion five hundred million United States dollars (US$ 3,500,000,000) allotted in two Series, "B" and "C", as follows:

A. The "B" Series, comprising five hundred thousand (500,000) registered shares in the amount of five thousand United States dollars (US$ 5,000) each, for a total amount of two billion five hundred million United States dollars (US$ 2,500,000,000), to be subscribed by the Governments or public, semi-public or private entities Member Countries;

B. The "C" Series, comprising two hundred thousand (200,000) registered shares in the amount of five thousand United States dollars (US$ 5,000) each, for a total amount of one billion United States dollars (US$ 1,000,000,000), to be subscribed by juridical or natural persons from outside the Member Countries;

C. Payment of Callable Capital shares shall be subject to call, with prior consent of the Board of Directors, as needed to meet the Corporation's financial obligations, if the Institution is unable to meet them from its own funds;

D. When the Corporation issues a call for a shareholder to pay the subscribed Callable Capital then due, the latter shall make the payment in United States dollars;

E. Calls for payment of Callable Capital shall be made pro rata, in accordance with the holding of each shareholder of the Corporation;

F. The shareholders' obligation to meet calls for payment of unpaid subscribed shares of Callable Capital shall subsist until the capital is fully paid up;

3. Series "B" shares may be subscribed by private entities in Member Countries, provided that their equity participation does not exceed forty-nine per cent (49%) of shareholder country's holding for that series;

4. Series "C" shares of Ordinary Capital may be converted into Series "B" shares of Ordinary Capital once the conditions approved by the General Meeting of Shareholders for accession to the Agreement establishing the Andean Development Corporation by the respective Member Country have been met.

5. Amended by Decision No. 187/2009.

Article 6. Issuance of shares against non-subscribed authorized capital[5]

The non-subscribed authorized capital may be issued by the Board of Directors for subscription with the affirmative vote of one half plus one of the Directors, in the following cases:

(a) For the issuance of new "B" series shares, which shall be offered in the first instance to the shareholders, in the ratio of the shares held by them to the total capital;

(b) For the issuance of shares in the event of accession by a new country, on which occasion the country concerned may subscribe, either directly or through an organization designated by it, to one "A" series share and a number of "B" series shares on such terms as may be determined by the Board of Directors;

(c) For the issuance of "C" series shares, the characteristics of which shall be determined in each case by the Board of Directors, for subscription by juridical or natural persons outside the Member Countries;

(d) For the issuance of "B" and "C" series shares corresponding to the Callable Capital.

Article 7. Special subscription right

Notwithstanding subparagraph (a) of the preceding article, any country holding fewer "B" series shares than other countries may at any time subscribe to shares against the authorized capital up to an amount equal to that of the largest shareholder.

Article 8. Exposure limits[6]

1. The maximum limit of indebtedness of the Corporation, calculated as the sum of deposits, bonds, third-party loans and other similar obligations, shall be three and one half (3.5) times its net worth, this being understood as the sum of its paid-up capital, equity, reserves, surplus, accrued net income and other equity accounts.

2. The total amount of the loan and investment portfolio of the Corporation plus the total of guaranties and sureties may not exceed an amount equivalent to four (4) times its net worth.

Article 9. Increase or reduction of capital

The capital may be increased or reduced by a decision adopted at the Shareholders' Meeting.

Article 10. Transferability of stock[7]

"A" series shares may be transferred within each country, with the prior consent of the respective Government, to whatever public, semi-public or private entity pursuing a social and public purpose may be designated by the Government. "B" series shares may be transferred only to juridical or natural persons of the respective country, provided that the percentage assigned to private entities that is

[5] Amended by Decision No. 187/2009.
[6] Amended by Decision No. 120/1996.
[7] Amended by Decision No. 187/2009.

specified in article 5 (3) is respected. Subject to the approval of the Board of Directors, "C" series shares may be transferred to juridical or natural persons outside the Member Countries.

Chapter III
Shareholders' meetings

Article 11. Shareholders' meetings

Shareholders' meetings may be regular or special. They shall be composed of the shareholders or their representatives or proxies, who shall meet subject to the quorum and in the manner prescribed in this Agreement.

Article 12. Regular and Special Meetings[8]

Regular Meetings shall be held once a year within ninety (90) days from the end of the fiscal year after being convened by the Executive President of the Corporation. Special Meetings shall be convened by the Executive President of the Corporation, on his own initiative, or at the request of the Board of Directors, of forty per cent (40%) "A" series shareholders or of shareholders representing at least twenty-five per cent (25%) of the paid-up capital. The notice of Special Meetings shall be given at least thirty (30) calendar days before the date of the Meeting and shall indicate the reason for convening it.

Article 13. Terms of reference of Regular Meetings[9]

Regular Meetings shall have the following terms of reference:

(a) To consider the annual report of the Board of Directors, the general balance sheet and the statement of profits and losses, after external auditors have made their report, and to determine the allocation of profits, including, at their discretion, the allocation thereof to the funds referred to in subparagraph (b) below;

(b) To establish special funds for specific purposes;

(c) To elect the members of the Board of Directors in accordance with the rules set forth in this Agreement;

(d) To appoint the external auditors;

(e) To determine the remuneration of the members of the Board of Directors and of the external auditors;

(f) To deal with any other matter expressly submitted to it which does not fall within the competence of another organ of the Corporation.

Article 14. Terms of reference of Special Meetings

Special Meetings shall have the following terms of reference:

(a) To increase, reduce or reconstitute the share capital;

(b) To dissolve the Corporation;

---

[8] Amended by Decision No. 187/2009.

[9] Amended by Decision No. 204/2012.

(c) To change the headquarters of the Corporation, on the proposal of the Board of Directors;

(d) To deal with any other matter expressly submitted to it which does not fall within the competence of another organ of the Corporation.

Special Meetings shall deal only with the matters specifically mentioned in the notice of convocation.

Article 15. Amendment of the Agreement[10]

Special Meetings may amend the provisions governing the Corporation in respect of all administrative and procedural matters, as required for the more effective fulfilment of its purposes.

Special Meetings may likewise, with the favourable vote of all the "A" series shareholders plus one half plus one of the other shares represented at the Meetings, change the composition of the Board of Directors and amend such provisions as it may deem pertinent, adhering at all times to the basic criteria of this Agreement.

As regards other provisions relating to the actual structure of the Corporation, Special Meetings may recommend such amendments as, in their opinion, should be submitted for the approval of the Contracting Parties.

Article 16. Quorum[10]

The quorum for Regular and Special Shareholders' Meetings shall be constituted when a number of persons is present representing at least eighty per cent (80%) of the "A" series shares and fifty per cent (50%) of the remaining shares.

When a Regular or Special Meeting cannot be held because there is no quorum, another Meeting shall be convened with at least thirty (30) calendar days' advance notice, it being indicated in the notice that the Meeting shall be held regardless of the number of participants.

Article 17. Decisions[10]

At Regular Meetings decisions shall be taken by a majority representing at least sixty per cent (60%) of the "A" series shares, plus one half plus one of the remaining shares represented at the Meeting.

At Special Meetings the required majority shall be eighty per cent (80%) of the "A" series shares, plus one half plus one of the remaining shares represented at the Meeting.

When a Regular or Special Meeting is held following a second convocation, decisions shall be adopted with the affirmative vote of at least forty per cent (40%) "A" series shareholders, plus the absolute majority of the other shares represented at the Meeting.

Article 18. Right to vote

Shareholders who are in arrears in the payment of their capital contributions shall not have the right to vote.

[10] Amended by Decision No. 187/2009.

Article 19. Distribution of reports and balance sheets

Every shareholder shall have the right, during the fifteen (15) calendar days prior to the Shareholders' Meeting, to examine at the headquarters of the Corporation the inventory and list of shareholders, and may request a copy of the general balance sheet and the auditors' report. At least fifteen (15) calendar days before each Meeting, the reports and balance sheets shall be sent to every shareholder at the address registered with the Corporation.

Article 20. Minutes

The discussions and decisions of the Meetings shall be recorded in a special book of Minutes.

Article 21. Votes of the members of the Board of Directors

Members of the Board of Directors and the Executive President shall not vote on the approval of the balance sheet or on matters which may involve their responsibility, nor shall they act as proxies for other shareholders at the Meetings.

Article 22. Force of the decisions

The decisions of the Meetings, within the limits of their terms of reference as laid down in this Agreement, shall be binding on all shareholders, including those not present at the Meetings.

Chapter IV
The Board of Directors

Article 23. Membership[11]

The Board of Directors shall be in the manner indicated in article 24 below. The Directors shall be elected for a term of three (3) years, and may be re-elected. Each Director shall have a personal alternate who shall be elected for the same term and in the same manner as the regular member.

Article 24. Appointment and election[12]

Directors shall be named as follows:

(a) One (1) Director and his Alternate, appointed one (1) per share of each series "A" shareholder;

(b) One (1) Director and his Alternate, who shall be appointed by the holders of the series "B" shares from each of the Member Countries who have the right to such designation and are not private banking or private financial entities;

(c) One (1) Director and his respective Alternate, who shall be elected by the private banking and financial entities of the Member Countries which are shareholders of the Corporation;

[11] Amended by Decision No. 187/2009.
[12] Amended by Decision No. 204/2012.

(d) Two (2) Directors and their Alternates who shall be elected by the holders of the series "C" shares.

For elections of Directors, each shareholder shall have a number of votes equal to the number of paid-up shares held or represented by him. In the case of series "C" shareholders, the Directors and Alternates shall be of different nationalities.

Article 25. Quorum[11]

The Board of Directors may hold valid meetings when at least one half plus one of its members are present.

Article 26. Resolutions[11]

Each Director shall have one vote at the meetings of the Board of Directors. Resolutions shall be adopted by a majority of not less than one half plus one of the Directors present. In the cases referred to in article 6 and in article 27 (a), (c), (d), (h), (i), (m) and (o), the favourable vote of at least one half plus one of the Directors shall be required.

Article 27. Terms of reference of the Board of Directors[13]

The Board of Directors shall have the following terms of reference:

(a) To establish and direct the financial, credit and economic policy of the Corporation;

(b) To elect each year one Director to preside over the meetings of the Board of Directors and the Shareholders' Meetings;

(c) To appoint and remove the Executive President;

(d) To determine the remuneration of the Executive President;

(e) To approve the annual budget of expenditures proposed by the Executive President;

(f) To approve credit operations in respect of assets and liabilities, investments or any other operation pertinent to the purposes of the Corporation as proposed by the Executive President;

(g) To decide on the issuance of bonds, debentures and the like, and to lay down the terms thereof; to underwrite the subscription of shares and securities in general; to deal in share certificates; to authorize trust operations;

(h) To delegate to an executive committee, to any other subsidiary organs which the Board of Directors itself may deem it advisable to establish, or to the Executive President or other officials recommended by him, the functions referred to in subparagraphs (f) and (g) when the amount involved in the operations does not exceed the ceiling to be fixed by the Board of Directors itself;

(i) To decide, at the request of the Executive President, on matters not covered in this Agreement, as well as on their precise interpretation, reporting in the latter case to the next Shareholders' Meeting;

[13] Amended by Decision No. 204/2012.

(j) To submit to the Shareholders' Meeting the annual report and balance sheet;

(k) To propose to the Shareholders' Meeting the distribution of profits;

(l) To propose to the Shareholders' Meetings the creation of reserve funds;

(m) To adopt and amend the by-laws of the Corporation;

(n) To propose to the Shareholders' Meeting the establishment of special funds for specific purposes;

(o) To authorize the convening of Regular Shareholders' Meetings as prescribed in the Agreement and of Special Shareholders' Meetings when the corporate interest so requires, or when deemed necessary by the Board of Directors itself, or when requested by shareholders of the Corporation in conformity with article 12 of this Agreement; and

(p) To propose to the Meeting a change of headquarters should it consider this advisable for compelling reasons.

Article 28. Replacement[14]

The following rules shall apply for the replacement of a Director who is incapacitated or deceased or who has resigned;

(a) In the case of a Director representing the "A" series, the replacement shall be appointed directly by the holder of the share he represented; and

(b) In the case of a Director representing the "B" series, the Board of Directors shall appoint the outgoing Director's Alternate in his stead; where there is no alternate, it shall request the Member Country whose "B" series shareholders are represented on the Board to take the necessary steps to appoint the Director and his Alternate. The Director thus appointed shall remain in office only for the remainder of the term of his predecessor;

(c) In the case of a Director representing the private banking and financial entities of shareholder Member Countries or holders of "C" series shares, the Director shall be replaced by the alternate; where there is no alternate, he shall be appointed in accordance with the rule laid down in the last paragraph of article 24.

Article 29. Meetings[15]

The Board of Directors shall meet when it so decides, when convened by its Chairman, at the request of at least twenty-five per cent (25%) of the Directors, or at the request of the Executive President. The meetings shall be held at the headquarters of the Corporation except when the Board of Directors itself decides otherwise or on other occasions determined by the Board.

Article 30. Minutes

The discussions and decisions of the Board of Directors shall be recorded in a special book of Minutes.

---

[14] Amended by Decision No. 204/2012.

[15] Amended by Decision No. 187/2009.

Chapter V
The Executive President and other officers

Article 31. Duties of the Executive President

The Executive President, an international officer, shall be the legal representative of the Corporation and shall have the following terms of reference:

(a) To manage directly and administer the Corporation;

(b) To decide on and deal with any matter not expressly reserved for the Shareholders' Meetings, the Board of Directors, the Executive Committee or any other subsidiary organs which may be established by the Board of Directors, and such other matters as may be assigned to him;

(c) To participate, with the right to speak but not to vote, in the meetings of the Board of Directors.

Article 32. Term of office

The Executive President shall hold office for five (5) years and may be re-elected. He shall remain in office until relieved by his successor.

Article 33. Temporary absences

The Executive President may be replaced *pro tempore* by the ranking Vice-President or, in his absence, by an officer appointed by the Board of Directors.

Article 34. Vacancy

If the office of the Executive President becomes vacant, the Board of Directors shall appoint his successor.

Article 35. Powers

The Executive President may confer powers of attorney for representation of the Corporation in court or outside, with such authority as he may deem necessary. He may also confer special powers of attorney for purposes of concern to the Corporation.

Article 36. Vice-Presidents[16]

The Executive President shall appoint such Vice-Presidents as may be necessary for the operation of the institution, stipulating in each case their terms of reference, duties and remuneration. The officers thus appointed should be of different nationalities among the Member Countries.

Article 37. Staff appointments[17]

Staff appointments and the determination of the appointees' terms of reference, duties and remunerations shall be the responsibility of the Executive President.

[16] Amended by Decision No. 187/2009.
[17] Amended by Decision No. 120/1996.

Appointments of Vice-Presidents shall be made following consultation with the Board of Directors.

Article 38. Selection of staff[18]

In recruiting the staff of the Corporation, primary consideration shall be given to efficiency, competence and honesty, but due regard shall also be given to the need for selecting the staff on as wide a geographical basis as possible, preferably among the Member Countries.

Article 39. International character of the staff

In the performance of their duties, staff members shall not seek or receive instructions from any Government or from any authority external to the Corporation. They shall refrain from any action which might reflect on their position as international officials responsible only to the Corporation.

Chapter VI
Accounting period, balance sheet and profits

Article 40. Accounting period

The Corporation's accounting periods shall be of one year's duration; the starting date shall be established by the Board of Directors.

Article 41. Balance sheet and statement of profits and loss

On the last day of the accounting period, the accounts must be closed in order to draw up the annual balance sheet and the statement of profit and loss for the period in question.

Article 42. Reserve and special funds[19]

A quota of at least ten per cent (10%) of the net profits shall be set aside annually to form a reserve fund until it reaches an amount not less than fifty per cent (50%) of the subscribed capital. The Shareholders' Meeting may also decide to establish special funds in accordance with article 13 and other reserve funds and to distribute the remainder to shareholders in the form of dividends.

The special funds shall have the purpose and functions which are stipulated in each case; the Corporation shall be responsible for their administration, and may delegate the same to a third party.

The special funds shall be governed by the provisions of this article and those which may be established by the Board of Directors in each case.

The resources of the special funds shall be completely independent of the resources of the Corporation and shall be so maintained, accounted for, presented, used, invested, committed and otherwise disposed of.

[18] Amended by Decision No. 187/2009.
[19] Amended by Decision No. 204/2012.

In the use of the special funds, the financial responsibility of the Corporation, as administrator, shall be limited to the net assets and reserves of each of the special funds constituted. The Corporation shall have no residual interest in the net assets of the special funds.

Article 43. Auditors

The Corporation shall engage an auditing firm of recognized international standing to certify the annual balance sheet for submission to the Regular Shareholders' Meeting.

Chapter VII
Dissolution and arbitration

Article 44. Dissolution

When the dissolution of the Corporation has been agreed upon, it shall be wound up by a trustee or a board of trustees, as decided by the Shareholders' Meeting. The trustee or board of trustees shall represent the Corporation during the winding-up, pay its outstanding debts, collect its outstanding accounts, distribute the residue among the shareholders in proportion to the paid-up capital represented by each share; and, in general, perform all functions relating to the winding-up.

The Shareholders' Meeting which appoints the trustee or board of trustees shall determine his or its period of duty and lay down the basic rules governing the winding-up. Upon completion of their duties, or of the periods determined by the Shareholders' Meeting, the trustees shall submit a detailed report on their activities and, on concluding their work, shall present a detailed report on the entire winding-up.

Article 45. Arbitration

In the case of a dispute between the Corporation and its shareholders, the dispute shall be submitted to arbitration by a tribunal of three arbitrators.

One of the arbitrators shall be appointed by the Board of Directors of the Corporation, another by the party concerned and the third by agreement between the arbitrators. If they cannot agree, the Corporation or the party concerned may request the Joint Commission or any organ which may replace it, to appoint the third arbitrator.

None of the arbitrators may be of the same nationality as the party in the dispute.

If all efforts to reach unanimous agreement fail, decisions shall be taken by majority vote.

The third arbitrator may settle all questions of procedure and competence in any case where the parties are in disagreement with respect thereto.

Chapter VIII
Immunities, exemptions and privileges

Article 46. Scope of this chapter

In order to fulfil the purposes set forth in this Agreement, the High Contracting Parties agree that the Andean Development Corporation shall enjoy in the territory of each Party the immunities, exemptions and privileges set forth in this chapter.

Article 47. Immunity of assets

The property and other assets of the Corporation, wherever situated, shall be immune from expropriation, search, requisition, confiscation, seizure, attachment, distraint, withholding or any other form of forcible takeover which may interfere with the control of the entity over the said property as a result of executive or administrative actions by any of the Contracting States.

The said property and assets shall enjoy the same immunity with respect to legal process unless a final judgement has been pronounced against the Corporation.

Article 48. Transferability and convertibility

Assets of any kind which belong to the Corporation shall be freely transferable and convertible.

Article 49. Inviolability of archives

The archives of the Corporation shall be inviolable.

Article 50. Freedom of assets from restrictions

To the extent necessary for the Corporation to carry out its purpose and functions and to operate in accordance with this Agreement, all property and other assets of the institution shall be free from restrictions, regulations, controls and moratoriums of any nature, unless otherwise provided in this Agreement.

Article 51. Privilege for communications and correspondence

Official communications of the Corporation shall be accorded by each Contracting State the same treatment that it accords to the official communications of other Contracting States.

The correspondence of the Corporation, including parcels and printed matter, when bearing its frank, shall be carried free of charge by the postal services of the Contracting States.

Article 52. Tax exemption

(a) The Corporation shall be exempt from all taxes and, where pertinent, from all customs duties on its income, property and other assets, and on the operations and transactions it may carry out under this Agreement.

The Corporation shall likewise be exempt from any obligation for the payment, withholding or collection of any tax, contribution or duty.

(b) All salaries and emoluments paid by the Corporation to the Directors and their alternates and to its officers or employees who are not citizens or nationals of the country in which the Corporation has its headquarters or office shall be exempt from taxes.

(c) No tax of any kind shall be levied on any debenture, bond or security issued by the Corporation, including any dividend or interest thereon, by whomsoever held:

1. Which discriminates against such debenture, bond or security solely because it is issued by the Corporation; or

2. If the sole jurisdictional basis for such taxation is the place or currency in which the debenture, bond or security has been issued, made payable or paid, or the site of any office or place of business maintained by the Corporation.

(d) No tax of any kind shall be levied on any debenture, bond or security guaranteed by the Corporation, including any dividend or interest thereon, by whomsoever held:

1. Which discriminates against such debenture, bond or security solely because it is guaranteed by the Corporation; or

2. If the sole jurisdictional basis for such taxation is the site of any office or place of business maintained by the Corporation.

Article 53. Personal immunities and privileges

The Directors, Executive President, Vice-Presidents and executive, technical and professional officers of the Corporation shall enjoy the following privileges and immunities:

(a) Immunity from legal and administrative process with respect to acts performed by them in their official capacity, except when the Corporation expressly waives the immunity;

(b) Where they are not local nationals, the same immunities from immigration restrictions, alien registration requirements and military service obligations, and the same facilities as regards exchange regulations, as are accorded by the country to the representatives, officials and employees of comparable rank of other member countries; and

(c) The same privileges in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

Article 54. Judicial proceedings

Judicial proceedings against the Corporation may only be brought in a court of competent jurisdiction in the territory of a Contracting State in which the Corporation has an office or has appointed an agent or proxy authorized to accept service or notice of process, or where it has issued or guaranteed securities.

No judicial action shall be brought against the Corporation by the Contracting States parties to this Agreement or by any person acting for them or upon whom their rights may devolve. Nevertheless, shareholders may have recourse to such

DONE in the city of Bogota, on the seventh day of the month of February nineteen hundred and sixty-eight, in the Spanish language, in six equally authentic copies.

IN WITNESS WHEREOF, the undersigned plenipotentiaries have signed the present Agreement:

For the Government of the Republic of Ecuador:
GONZALO APUNTE

For the Government of the Republic of Bolivia:
TOMÁS GUILLERMO ELIO

For the Government of the Republic of Colombia:
JORGE VALENCIA JARAMILLO

For the Government of the Republic of Chile:
SALVADOR LLUCH

For the Government of the Republic of Peru:
JOSÉ DE LA PUENTE

For the Government of the Republic of Venezuela:
HECTOR HURTADO

Annex

Amendments to the Agreement

Decisions	*Date*	*Purpose*
1. No. 21 S.M.I/74	Nov.21-22/74	Increase of registered capital
2. No. 29 S.M.II/77	Jan.18-19/77	Series "A" and "B" only to be subscribed by Governments or public and semi-public institutions, or institutions under private law with a social and public purpose.
		Indication of the convenience for Chile to remain as a member of CAF under a special regime.
3. No. 33 R.M.VIII/77	Oct.01/77	Withdrawal of Chile (articles 5, 12, 15, 23, 24, 25 and 26)
4. No. 34 R.M.VIII/77	Oct.01/77	Increase of registered capital (article 5)
5. No. 73 S.M.III/86	Jun.06/86	Increase of capital (article 5)
6. No. 75 S.M.IV/86	Oct.30/86	Articles 5, 6, 23, 24, 25 and 26
7. No. 79 R.M.XVIII/87	Mar.30/87	Articles 5 and 10
8. No. 90 S.M.V/89	Oct.30/89	Increase of authorized capital: Issuance of Series "B" (article 5)
9. No. 91 S.M.V/89	Oct.30/89	Articles 5, 23 and 24
10. No. 96 S.M.VI/90	Jun.12/90	Increase of authorized capital (article 5)
11. No. 97 S.M.VI/90	Jun.12/90	Article 5
12. No. 120 S.M.VII/96	Jul.02/96	Articles 5, 6, 8, 10, 23, 24, 27, 37 and 55
13. No 128 R.M.XXIX/98	Mar.06/98	Articles 5,10 and 55
14. No 130 S.M.VIII/98	Dec.02/98	Article 5
15. No 149 S.M.IX/02	Mar.01/02	Articles 5, 23, 24 and 25
16. No 164 S.M.X/05	Jun.06/05	Articles 3 and 59
17. No. 179 S.M.XI/08	Mar.25/08	Article 5
18. No. 187 S.M.XIII/09	Dec.08/09	Articles 4, 5, 6, 10, 12, 15, 16, 17, 23, 24, 25, 26, 28, 29, 36, 38 and 55
19. No. 204 S.M.XV/12	Mar.06/12	Articles 13, 24, 27, 28 and 42

Note:
R.M. = Regular Meeting.
S.M. = Special Meeting.